

TRANSPARENCY AND IMPLEMENTATION OF THE SPS AGREEMENT

*Submission by the United States
June 1998*

1. The WTO Agreement recognizes that transparency is the cornerstone of an effective, rules-based international trading system. Members' interest in uniform application of this principle is reflected *inter alia* in Article X of GATT 1994. As part of their ongoing work, a range of WTO committees and working groups continue to explore ways in which improved transparency may serve members' broader trade interests and objectives. For example, the report of the Committee on Technical Barriers to Trade (G/TBT/5) on the triennial review of the TBT Agreement stressed the importance of transparency in effectively implementing that Agreement.

Transparency Under the SPS Agreement:

2. The importance that members attached to transparency issues under the SPS Agreement is reflected in the detailed provisions for notifications and the exchange of information contained in Annex B. The improvements in international communication on SPS issues that have resulted from the implementation of these provisions has proved to be an important instrument for advancing members' overall objectives under the SPS Agreement.

3. At the same time, there have been inconsistencies in the implementation of members' general commitment to transparency as it applies to the application of SPS measures and of some of the specific related provisions of the Agreement. The Committee has previously discussed apparent problems in the operation of the Agreement's notification procedures. Some delegations have suggested steps to address these problems. The United States is submitting a separate paper on the operation of notification procedures, for the Committee's consideration during the triennial review.

4. In Article X.1 of GATT 1994, members agreed that trade measures that have been adopted, including those covered by the SPS Agreement, shall be published promptly in a manner that allows both traders and governments to become acquainted with those measures. In the SPS and TBT agreements, members extended their commitment to advance publication to cover certain proposed measures. In the TBT Agreement, members agreed that such proposals should be published in a manner that allows interested parties in other members to become acquainted with them¹. In the interests of ensuring consistent and uniform application of WTO transparency

¹ Article 2.9.1 of the TBT Agreement provides that members shall "publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other Members to become acquainted with it, that they propose to introduce a particular technical

procedures, the United States believes that it is important for members to provide the same opportunity for all interested parties to become acquainted with proposed sanitary and phytosanitary measures.

Benefits of Transparency:

5. There is a growing interest throughout the international community in the significant public policy benefits of transparency, consideration of input from all interested parties, and other factors contributing to improved regulatory quality. Considerable work has already been done on this subject in the Organization for Economic Cooperation and Development (OECD), the Asia Pacific Economic Cooperation (APEC) forum and other international fora. A recent OECD study notes, for example, that improved transparency has been found to produce a range of benefits, including:

- “bringing into the discussion the expertise, perspectives, and ideas for alternative actions of those directly affected;
- helping regulators to balance opposing interests;
- identifying unintended effects and practical problems;
- providing a quality check on the administration’s assessment of costs and benefits; and
- identifying interactions between regulations from various parts of government.”²

6. More generally, there is a growing realization of the importance of transparency and improved regulatory quality in providing a stable and sustainable foundation for long-term economic and social growth and development.

Benefits of Transparency in Relation to the SPS Agreement:

7. Transparency in the regulatory process can also be of considerable practical use to members in implementing specific commitments under the SPS Agreement. For example, obtaining and

regulation.” Under Article 5.6.1, members accept the same commitment with respect to proposals for new conformity assessment procedures.

² “Recommendations of the Council of the OECD on Improving the Quality of Government Regulation,” OECD/GD(95)95, Organization for Economic Cooperation and Development, Public Management Service, March 9, 1995.

taking into consideration the views of all interested parties can help to ensure that a member's decision-makers are aware of available scientific and other information, including the information listed in Article 5.2-5.3, relevant to a proposed sanitary or phytosanitary measure. That, in turn, may assist members in ensuring that measures are in accord with their other commitments under the Agreement, including under Articles 2, 5 and 6. Further, allowing public review of the basis for a sanitary and phytosanitary measure greatly facilitates a member's ability to comply with its Annex B commitments to provide such information to other members through its national inquiry point.

8. Transparency helps to ensure that the public is aware of the basis for regulatory decisions and that decision makers are accountable for their actions. At the same time, transparency should not undermine members' efforts to ensure that measures address known or potential health risks on the basis of science, and that their human, animal and plant health regimes are not compromised by commercial or other political pressures. Maintaining the integrity and reliability of members' SPS regimes is the foundation of a sustainable and effective rules-based trade system.

9. Many members have adopted domestic procedures to ensure regulatory transparency and accountability with respect to all interested parties in civil society. Such procedures include:

- publication of regulatory proposals in a manner that allows all interested parties to become acquainted with them;
- providing an opportunity for all interested parties to comment on such proposals;
- procedures for taking those comments into account in developing final regulatory actions; and
- publication, with final regulatory decisions, of explanations of the need for regulatory action and the scientific and other considerations upon which they are based, including the disposition of comments received.

Recommendation:

10. Recognizing the overall importance of transparency to the effective operation of the rules-based trading system and, in particular, the important relationship between transparency and the effective implementation of the SPS Agreement, the Committee should continue to compile and analyze information on members' adherence to relevant provisions of the Agreement³ and

³ Considerable relevant information has already been compiled, including in G/SPS/GEN/27, with its revisions, and G/SPS/GEN/35.

evaluate practices such as those discussed above which can assist members in the practical and effective implementation of the Agreement as a whole. In this context, and with the additional objective of ensuring uniform application of WTO transparency procedures, the Committee should note the importance of publishing proposed sanitary and phytosanitary measures at an early stage, in a manner that allows all interested parties to become acquainted with and provide input relating to those proposals. As part of the Committee's ongoing review of these and other transparency issues, members should be invited to share their experiences, with a view to identifying common objectives and approaches.

May 28, 1998